

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. H-12/09-647
)
 Appeal of)

INTRODUCTION

The petitioner appeals the decision by the Department for Children and Families (DCF), Economic Services Division (ESD) terminating her RUFA and Food Stamp (3 Squares VT) benefits. The issue is whether the petitioner and her husband have had "eligible children" in their home since their children were removed from their home and placed in the custody of DCF, Family Services Division (FSD) pursuant to orders by the Family Court that the children were in need of care and supervision (CHINS).

DISCUSSION

The facts are not in dispute. In November 2009 the Family Court found that the petitioner's four children were in need of care and supervision (CHINS), and it transferred custody of the children to DCF-FSD, who placed them in foster care.

Despite several subsequent Family Court hearings the children have remained in foster care under DCF-FSD custody and supervision since November 2009, and DCF-FSD has been making foster care payments to the children's foster home (see *infra*). On November 30, 2009, the Department notified

the petitioner that her RUFA benefits would end on December 15, 2009 and that her Food Stamps would be reduced effective January 10, 2010 because her children were no longer living in her and her husband's household. The petitioner appealed and her benefits have continued pending the outcome of this fair hearing.

A fair hearing was initially held on February 4, 2010. The parties agreed at that time to continue the matter based on the petitioner's representation that a "final" Family Court hearing was to be held later that month, and that she believed the children would be returned to her at that time.

At a fair hearing held on March 8, 2010 the petitioner did not dispute that the status of her CHINS case was set forth in the following Order of the Family Court, dated February 10, 2010:

The within matter came before the court on several occasions, most recently January 12, 2010 on the State's motion to modify the disposition in this case. Based on the evidence taken it is ordered that the motion to modify disposition is granted, and DCF shall have the custody of the four juveniles captioned above.

DCF shall submit a new case plan. It is also ordered that DCF meet with the parents and VSHA (Vermont State Housing Authority) to determine the feasibility of a family unification voucher. Parents to work on a budget and employ such financial planning as is necessary to effectuate the requirements of future housing needs.

In the absence of other information this court is likely to reunify children with parents if housing issue is solved in a stable way.

The Board has consistently held that federal and state

statutes and regulations clearly dictate, as matters of both fact and law, that children can have only one "home" for RUFA and Food Stamp purposes, and that that home can only be with the parent, relative, or foster parent who is either "living with" the child or serving as the primary provider of the child's "care and control"--or both. See Fair Hearing Nos. 11,243, 11,182, 10,999, 10,732, 9521, and 5553. In this case there is no dispute that since November 2009 DCF-FSD--not the petitioner---has had custody of the petitioner's children. (See 33 V.S.A. §§ 5502[1][10] and 5528[a].) It is also not disputed that during this time the children have been in the physical custody of a foster home, which has been primarily, if not solely, responsible for their day-to-day care and supervision. The petitioner also does not dispute that the foster home has been eligible for RUFA and Food Stamps on behalf of the children during this time.

An "eligible child" is defined in W.A.M. § 2230 as one "who meets all RUFA criteria of need, age, residence, and deprivation of parental support". W.A.M. § 2231 defines an "eligible parent" for RUFA as "an individual who . . . lives in the same household with one or more eligible . . . children." W.A.M. § 2230.3 provides as follows:

A "home" is defined as the family setting maintained, or in process of being established, in which the relative assumes responsibility for care and supervision of the child(ren). However, lack of a physical home (i.e. customary family setting), as in the case of a homeless family is not be itself a basis for disqualification (denial of termination) from

eligibility for assistance.

The child(ren) and relative normally share the same household. A "home" shall be considered to exist, however, as long as the relative is responsible for care and control of the child(ren) during temporary absence of either from the customary family setting.

The above provisions are essentially mirrored in the corresponding federal statutes and regulations. See 42 U.S.C. § 608(a) and 45 C.F.R. § 233.90(b)(2).

In several prior cases the Board has recognized and commented that in CHINS cases parents dependent on RUFA benefits may find it extremely difficult, if those benefits are terminated, to keep and maintain a home in which they and their children can be reunited. However, it has also noted that the federal statutes and regulations mandating that the state strive to maintain and reunite families are directed at FSD--not ESD. Thus, it cannot be concluded that this mandate requires ESD to continue making RUFA payments to parents that do not have care, control and supervision of their children who live elsewhere. Similarly, the general federal and state statutory goals of RUFA to strengthen and preserve "family life" cannot be used as a basis to override specific statutory and regulatory provisions (*supra*) regarding household eligibility. (See 33 V.S.A. §§ 301 and 1102.)

The Board has also held that the RUFA regulations regarding children in foster care provide further support for

the Department's position in these matters. W.A.M. § 2263.6 includes the following:

Eligible children placed in foster homes at State expense have their basic requirements met through vendor payment covering allowances for board, clothing, incidentals, personal spending and special needs made to one of the following:

1. A licensed foster home (family home, family group home, professional group home); or
2. A relative, other than a parent, whose home fully meets applicable licensing standards, but does not require a formal license because placement is limited to "related" child(ren).

Payments are made by the Family Services Division (FSD) under Title IV-E. FSD notifies ESD since Title IV-E recipients are automatically eligible for Medicaid.

In these cases the Board has upheld the Department's position that it cannot make support payments for the same children to two different households at the same time. The same is true for Food Stamps, which require that parents must be "living with" their children in order to receive benefits in their behalf. See W.A.M. § .273.1(a)(2)(i)(C), Fair Hearing No. T-09/08-390.

ORDER

For all the above reasons the Department's decisions are affirmed.

#